
To: Stork Townsend Inc. (tzarley@zarleylaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77878600 - ILINKER -
T61203US0 - EXAMINER BRIEF
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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

APPLICATION SERIAL NO. 77878600

MARK: ILINKER

77878600

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T61203US0

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EXAMINING ATTORNEY'S APPEAL BRIEF

The applicant has appealed the trademark examining attorney's refusal to register the trademark "iLinker" on the ground that it is merely descriptive within the meaning of §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

FACTS

On November 23, 2009, Applicant applied for mark, “iLinker”, on the Principal Register in stylized form for use on “meat processing machines, namely, technologically advanced sausage linking machines” in International Class 7. Registration was refused on March 1, 2010 under Section 2(e)(1) of the Trademark Act, 15 U.S.C. Section 1052(e)(1) because the applied-for mark merely describes a characteristic of applicant’s goods because it immediately conveys information regarding the nature of the goods which include intelligent sausage linking machines. On September 17, 2010 the examining attorney issued a Final Office Action maintaining the refusal under Section 2(e)(1) of the Trademark Act. Applicant filed its appeal brief on February 11, 2011, and the brief was forwarded to the undersigned examining attorney on February 14, 2011.

ISSUE

The sole issue on appeal is whether the applicant’s mark, iLinker, is merely descriptive of the identified goods under Section 2(e)(1) of the Trademark Act.

ARGUMENT

THE MARK IS MERELY DESCRIPTIVE BECAUSE IT DESCRIBES A CHARACTERISTIC OF THE GOODS.

Registration was refused because the applied-for mark merely describes a characteristic of applicant’s goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

The law applicable to this refusal is well settled. A mark is merely descriptive under Section 2(e)(1) if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); TMEP §1209.01(b).

Two major reasons for not protecting descriptive marks are (1) to prevent the owner of a descriptive

mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. Businesses and competitors should be free to use descriptive language when describing their own services to the public in advertising and marketing materials. *See In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

Determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the “documents” managed by applicant’s software, not “doctor” as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of “computer programs recorded on disk” where relevant trade used the denomination “concurrent” as a descriptor of a particular type of operating system). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

In this case, the applicant’s proposed mark, iLinker, merely combines two descriptive elements to describe a feature or characteristic of the goods. According to the previously attached definition form Merriam-Webster Online Dictionary, the term “I” is defined as “intelligence”. In addition, as indicated in the definition attached herein, the term “intelligence” means “the ability to perform computer functions.”^[1] Taking these definitions together, it is clear that the letter “I”, when used in connection with otherwise “dumb” machines, indicates that the machines are computerized, and thus intelligent. Further, when the letter “I” is placed before the highly descriptive and/or generic term “LINKER” it will immediately be perceived by prospective consumers as an abbreviation for “intelligence” or “intelligent” as in “intelligent linker” when used in the context of the technologically advanced sausage linking machines that employ computer technology. In fact, as seen in the specimen of record, the applicant’s meat processing machine does in fact feature a linker which is connected to a computer monitor. Given this use, it is clear that the sausage linking machine

is controlled by a computer, and is therefore an intelligent sausage linking machine.

Second, the word “LINKER” merely describes a feature of a sausage linking machine which utilizes a linker. Attached to the final office action is an article from the *Portland Press Herald* which describes sausage making and refers to a sausage making machine as a “linker” as follows:

“When I first tried to feed the linker, I was afraid of getting my hand caught, so I sort of threw the length of sausage at it, and missed. Later I learned there was nothing to fear, and fed the linker successfully. At the other end of the linker, another worker pulled the linked sausages out. The job at that end, Mailhot told me, was to wrap 10 or so links around your hand and then cut those sausages off and hang them, in sort of a wreath shape, around a horizontal metal pole.”

The article from *Meat International* indicates that meat manufacturers are doing all they can to increase the degree of automation by utilizing the most advanced PC technology. Another article from *The Irish Times* indicates that some processing machines are described as intelligent processing machines. Additionally, the attached definition from Merriam-Webster indicates that the term “link” is defined as “to couple or connect by or as if by a link”. ^[2] The noun form of “link” is “linker”. Clearly, the goods at issue feature a linker.

The applicant has merely combined the descriptive terms “I” and “LINKER” for their descriptive meaning. A mark that merely combines descriptive words is not registrable if the individual components retain their descriptive meaning in relation to the goods and/or services and the combination results in a composite mark that is itself descriptive. TMEP §1209.03(d); *see, e.g., In re King Koil Licensing Co. Inc.*, 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs and pillows where the evidence showed that the term “BREATHABLE” retained its ordinary dictionary meaning when combined with the term “MATTRESS” and the resulting combination was used in the relevant industry in a descriptive sense); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1663 (TTAB 1988) (holding

GROUP SALES BOX OFFICE merely descriptive of theater ticket sales services because such wording “is nothing more than a combination of the two common descriptive terms most applicable to applicant's services which in combination achieve no different status but remain a common descriptive compound expression”).

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable. *See, e.g., In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968).

In this case, both the individual components and the composite result are descriptive of applicant's goods and do not create a unique, incongruous or nondescriptive meaning in relation to the goods. Specifically, the letter “I” placed before the descriptive and/or generic word “LINKER” will immediately be perceived by prospective consumers as an abbreviation for “INTELLIGENT” as in “INTELLIGENT LINKER”.

Also attached to the final Office action in which the refusal to register was made and maintained were copies of U.S. registrations for marks where the letter “I” is used in conjunction with descriptive wording. Both Registration No. 3773676, for the mark iLANCE, and Registration No. 3776415, for the mark iMELT are registered on the Supplemental Register. As with applicant's mark, each of these registered marks begins with a lower-case “i” followed by a descriptive term, and each mark is used to identify goods associated with industrial equipment. Please note that third-party registrations featuring the same or similar goods and/or services as applicant's goods and/or services are probative evidence on the issue of descriptiveness where the relevant word or term is disclaimed, registered under Trademark Act Section 2(f) based on a showing of acquired distinctiveness, or registered on the Supplemental Register. *See Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1564-65, 4 USPQ2d 1793, 1797 (Fed. Cir. 1987); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006); *In re Finisar Corp.*, 78 USPQ2d 1618, 1621 (TTAB 2006). Further, the applicant specifically applied for the stylized mark “iLinker” with the letter “i” displayed in lower-case and the first letter

of the word “Linker” displayed in upper-case. The presentation of the mark is significant because it reinforces the impression of the “i” as an abbreviation for the word “intelligence” or “intelligent”. The fact that the “i” is in lower-case emphasizes the fact that it is merely the prefix “i” commonly used to signify “intelligence” or “intelligent” when placed in front of another term. The upper-case “L” in “Linker” stands out in contrast to the lower-case “i”.

Applicant argues that, considering the multitude of types of linkers, it would require a great deal of imagination to connect the term “LINKER” with technologically advanced sausage linking machines. However, the determination of whether a mark is merely descriptive is considered in relation to the identified goods, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978). Moreover, trademark rights are not static, and eligibility for registration must be determined on the basis of the facts and evidence in the record at the time registration is sought. *In re Morton-Norwich Products, Inc.*, 671 F.2d 1332, 213 USPQ 9, 18 (C.C.P.A. 1982). A term that was once arbitrary or suggestive may lose its distinguishing and origin denoting characteristics through use in a descriptive sense over a period of time, and come to be regarded by the purchasing public as nothing more than a descriptive designation. *In re Digital Research, Inc.*, 4 USPQ2d 1242, 1243 (TTAB 1987). Here, the term LINKER has only one meaning when used in relation to the goods at issue. As depicted in the specimen, the meat processing machines feature a linker.

Applicant proposes alternate words that might well be abbreviated herein by the letter “I”. However, the examining attorney is not persuaded by this argument. Descriptiveness is considered in relation to the relevant goods. The fact that a term may have different meanings in others contexts is not controlling on the question of descriptiveness. *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979); TMEP Sec. 1209.03(e).

Accordingly, the mark sought to be registered in the instant case, iLinker, is merely descriptive of applicant's technologically advanced sausage linking machines because the mark identifies a significant feature and characteristic of these goods, namely, technologically advanced sausage

linking machines featuring an intelligent, or computerized, linking machine.

CONCLUSION

For the foregoing reasons, the refusal to register on the basis of §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), for the reason that the mark is merely descriptive as applied to the goods, should be affirmed.

Respectfully submitted,

/Robert Clark/

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^[1] The Examining Attorney requests that the Board take judicial notice of the attached definition of “intelligence” from *Merriam-Webster*. The Board may take judicial notice of facts of universal notoriety, which need not be proved, and of whatever is generally known within its jurisdiction. See *Brown v. Piper*, 91 U.S. 37, 42 (S. Ct. 1875). To that end, dictionaries may be consulted.

^[2] The Examining Attorney also requests that the Board take judicial notice of the attached definition of “link” from *Merriam-Webster Dictionary*. The Board may take judicial notice of facts of universal notoriety, which need not be proved, and of whatever is generally known within its jurisdiction. See *Brown V. Piper*, 91 U.S. 37, 42 (S. Ct. 1875). To that end dictionaries may be consulted.

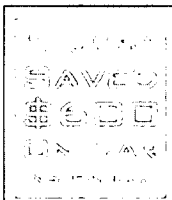
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intelligence

7 PHRASES FOUND

- intelligence (noun)
- Intelligence quotient (noun)
- intelligence test (noun)

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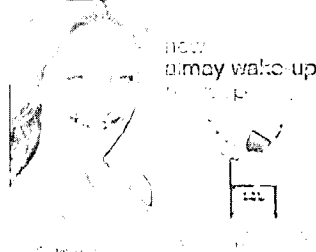
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in·tel·li·gence *noun* \in-tel-uh-jen(t)s\

Definition of INTELLIGENCE

- a** (1) : the ability to learn or understand or to deal with new or trying situations : REASON; also : the skilled use of reason
(2) : the ability to apply knowledge to manipulate one's environment or to think abstractly as measured by objective criteria (as tests)
b *Christian Science* : the basic eternal quality of divine Mind


Popularity



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- 1** **a** : Christian Science : the basic eternal quality of divine mind
c : mental acuteness : SHREWDNESS
- 2** **a** : an intelligent entity; *especially* : ANGEL
b : intelligent minds or mind <cosmic *intelligence*>
- 3** : the act of understanding : COMPREHENSION
- 4** **a** : INFORMATION, NEWS
b : information concerning an enemy or possible enemy or an area; *also* : an agency engaged in obtaining such information
- 5** : the ability to perform computer functions
- See intelligence defined for English-language learners »

Examples of INTELLIGENCE

- She impressed us with her superior *intelligence*.

- a person of average *intelligence*
noun *intelligents*, *intelligents* *intelligents*

First Known Use: 14th century

Related to INTELLIGENCE

Synonyms: brain(s), brainpower, gray matter, headpiece, intellect, intellectuality, mentality, reason, sense, smarts

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fetish, hypochondria, mania, narcissism, neurosis, pathological, psychosis, schadenfreude, subliminal

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link

link

27 ENTRIES FOUND

1) link (noun)

link *verb*

Definition of LINK

transitive verb

: to couple or connect by or as if by a link

intransitive verb

: to become connected by or as if by a link —often used with
up <the band *linked* up with a new record label>

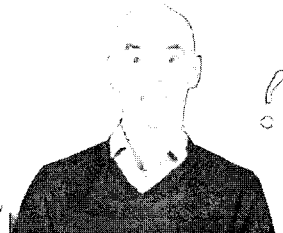
— link-er *noun*

First Known Use of LINK

15th century

Browse

Popularity



TOP 10 LISTS



The Dangerous Creation of
"Limelight," & More
Words With Remarkable Origins, Vol. 2

TREND WATCH



"Furlough"
With the prospect of a federal
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